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eignty or home-rule was a principle of universal application, the adoption of which in the territories would compose all sectional strife. Douglas finally "engrafted" the amendment upon his Nebraska bill. Doubtless he preferred the original indefiniteness of the measure, since it appears to have been chiefly a move in the game of presidential politics.

But the Nebraska bill with or without amendment was a monumental blunder and nothing that Mrs. Dixon has written makes it seem otherwise—unless war and the destruction of slavery by force of arms were to be desired. Apparently it never occurred to Senator Dixon or to the author of *The True History*, that if Congress had the right to acquire territory, it must also have the right to govern it. The South should have left no stone unturned to perpetuate the era of good feeling which followed upon the Compromise of 1850. It should have avoided all irritating and sectional issues, strengthened its system of domestic policy, and pocketed philosophically the occasional loss of a runaway slave. But other counsels prevailed; the Missouri Compromise was repealed—a result which the Compromise of 1850 did not effect—and the firebrand of popular sovereignty flung into the territories. The consequences of a measure, which was vague in all essential matters, which neither indicated the time when the will of the people should be ascertained nor provided machinery to determine it, could be nothing less than confusion, lawlessness and finally bloodshed.

Mrs. Dixon carries the practice of allowing men to tell their own story to excess. Chapter XX., for example, which contains seventy-three pages, is mainly a report of debates from the *Congressional Globe*. And on the whole her book, though dedicated to the truth of history, may be fairly characterized as an impassioned defense of mistaken policies and untenable constitutional theories.

LEVERETT W. SPRING.

*History and Digest of the International Arbitrations to which the United States has been a Party*, together with Appendices containing the Treaties, relating to such Arbitrations, and Historical and Legal Notes on other International Arbitrations ancient and modern, and on the Domestic Commissions of the United States for the Adjustment of International Claims. By JOHN BASSETT MOORE, Hamilton Fish Professor of International Law and Diplomacy, Columbia University, New York; sometime Assistant Secretary of State of the United States. (Washington: Government Printing Office. 1898. Six vols., pp. 5079.)

FIVE years ago Professor Moore began his labors, now happily and honorably ended, upon the history of the international arbitrations to which our government has been a party. This work has been done under a virtual Congressional contract, designating him as the editor, the consideration of which was the beggarly sum of twenty-five hundred dollars,

the greater part of which has necessarily been expended by the author in fees to copyists. The joint resolution required a digest of the decisions rendered in these arbitrations to accompany the history, and Professor Moore has taken pains to make this particularly full, adding references to all the authorities cited in the arguments of agents and opinions of commissioners and umpires. Not only does he touch upon the various points in dispute in each arbitration proceeding as it is treated, but separate chapters are devoted to such subjects as Rules of Procedure, Powers of Arbitrators to Determine their own Jurisdiction, Intervention, Domicil, Nationality, Renunciation of the Right to National Protection, Neutrality, Arrest, Imprisonment and Detention, Expulsion, Acts of Authorities, Denial of Justice, and Limitation and Prescription. With the same fullness he gives accounts of classes of cases that come before mixed commissions—contract claims, revenue cases, forced loans, bond cases, war claims and prize cases. He has thus let loose upon the world, to borrow Professor Woodrow Wilson's phrase, an immense amount of "cloistered learning," and has thereby rendered an invaluable service to our government, and indeed to all civilized governments disposed to settle international disputes by peaceful means. The publicist, the diplomat, and the historian will find in Professor Moore's volumes a rich mine of information. It would have been very easy for the author under his contract to have given a dry and perfunctory statement of the formation, proceedings and adjudications of these arbitral boards. But Professor Moore, who had as early as 1891 written an interesting paper on international arbitration, which was published in the *Report of the American Historical Association* for that year, had become so enamored of the subject, that he has consulted all available sources of information, documents published and unpublished, memoirs, biographies, orations, local histories, and even public men still living who were members of these "High Courts," for interesting personal details concerning those who took part in our various mixed commissions. Nor has he confined himself to the letter of his contract, which might fairly be construed to require a discussion only of those arbitrations in which our government has been a party *litigant*, but he has furnished a full history of all those international disputes in which the President of the United States or some American jurist selected by him or agreed upon by the parties, has acted as arbitrator. Examples of these are the services of Mr. J. C. Bancroft Davis, Assistant Secretary of State in 1869, as arbitrator between Great Britain and Portugal concerning their respective claims to the island of Bulama on the west coast of Africa; of President Hayes in 1878, in settling a boundary dispute between Paraguay and the Argentine Republic; of President Cleveland in similar controversies between Costa Rica and Nicaragua, and between Brazil and the Argentine Republic, and also in the Cerruti claim brought by Italy against Colombia; of Mr. Alexander Porter Morse in the claim of Van Bokkelen against Hayti; and of the Honorable William Strong, a retired Justice of the Supreme Court of the United States, in the claims of Pelletier and Lazare against the same government.

It has frequently happened that our government has itself assumed the settlement of claims of its own citizens against foreign governments. This has just occurred in the recent negotiation with Spain, and another notable instance was the arrangement with Mexico in 1848. In these cases, and also where a sum in gross is paid to the United States by a foreign government in satisfaction of claims of our citizens against it, as in the payment by Great Britain under the Geneva award, a domestic tribunal is established under authority of an act of Congress to hear and determine the individual claims. Of the eleven tribunals of this character which have been thus established, Professor Moore has given a full account in Appendix I. of his work, covering 489 pages.

In another appendix the author in his conscientious endeavor to furnish the public, regardless of the mere terms of his contract, an exhaustive treatment of this interesting and almost wholly undeveloped subject, has added voluminous historical notes relating to arbitrations prior to and during the nineteenth century. In respect of the history of arbitration in the East, in Greece, under the Roman Empire, and during the Middle Ages, Professor Moore has been much aided by the work of M. Mérignhac, entitled *Traité Théorique et Pratique de l'Arbitrage International*, from which he quotes freely.

He devotes a section of this appendix to the subject of "mediation," and gives numerous examples of its employment, one of the most notable instances of its use being a negotiation begun by our government in 1866 and concluded in 1872 for the purpose of bringing to a close the war between Spain on the one side and the allied republics of Peru, Chile, Bolivia and Ecuador on the other.

Another section relates to the various plans which have been suggested for the establishment of a permanent system of arbitration. In his paper read before the American Historical Association, Professor Moore, commenting on the wise rules which guided our nation from the first as respects our duty to neutrals, our persistent advocacy of the right of expatriation, and our contribution to the establishment of the system of extradition, found particular cause for congratulation in our constant endeavor to substitute arbitration for force in the adjustment of disputes among nations.

As early as 1832 the Senate of Massachusetts expressed an opinion in a resolution, adopted with only five dissenting votes, that "some mode should be established for the amicable and final settlement of all international disputes instead of resort to war."

Later the legislature of that state and also that of Vermont recommended by resolution that a congress of nations be convoked for the purpose of establishing an international tribunal for the adjustment of differences. Various resolutions were also reported by committees of the national Congress in the fifties, recommending that our government should secure whenever practicable a stipulation in all treaties providing for the settlement by arbitration of all international controversies. In 1874 the House of Representatives passed a resolution in favor of general arbitra-

tion. The international American conference which met in Washington in 1889 adopted a plan pledging the republics of North, Central, and South America to arbitration "as a principle of American international law for the settlement of the differences, disputes or controversies that may arise between two or more of them," but it has not been ratified by treaties.

It is still fresh in the public memory that our Congress in 1890 requested the President to invite negotiations with other governments looking to the settlement of disputes by arbitration, and that in 1893 the British House of Commons adopted a resolution which, after reciting this request, expressed the hope that Her Majesty's Government would co-operate with the United States in this respect.

These resolutions bore excellent fruit. Sir Julian Pauncefote and Secretary Gresham, and, after the latter's death, Lord Salisbury and Secretary Olney conducted an able correspondence resulting January 11, 1897, in an admirable treaty, which unfortunately failed in the Senate. However, President McKinley, who in his inaugural address said: "We want no wars of conquest; we must avoid the temptation of territorial aggression," has urged the action of the Senate on this very treaty, which was "the result of our own initiative." Professor Moore gives us the gratifying information that the subject of a permanent treaty of arbitration between the two nations is still under consideration in the Senate. The present is assuredly the most propitious time for the conclusion of such a treaty. Towards the establishment of a permanent plan of this nature at this time as respects not only Great Britain but all civilized nations, the volumes now under consideration will doubtless give an impetus.

At the end of these volumes the author has wisely added the text of all the treaties relating to arbitrations to which our government has been a party.

It is impossible within our limits to examine in detail the arbitrations which Professor Moore so fully describes, beginning in 1794, when our first trial of this method of settling disputes was made under the Jay treaty, and coming down to date. There have been fifteen of these with Great Britain, two of which were particularly noteworthy—the Geneva tribunal and the Fur Seal arbitration at Paris. With Spain we have had two, and concerning the first one—created by the treaty of 1795—Professor Moore has made a most important discovery. The impression has generally prevailed that there was never any arbitration conducted under the twelfth article of that treaty. It has been supposed that it was wholly annulled by the treaty of 1819. No records of any early commission are in the archives of the Department of State. But Professor Moore has not only produced incontestable proofs from the letters of early Secretaries of State that awards were made, but his industrious searches led to the discovery in that department of an old volume containing a copy of the awards. With France we have had but one arbitration. It related to war claims. With our neighbor Mexico we have

had two. The last one of these—that of 1868—has occasioned a remarkable controversy. Mexico having attempted to show that two of the awards of Sir Edward Thornton, the umpire, in favor of American citizens, were obtained by fraud, the Secretary of State suspended the distribution of the money paid by that government upon them. The claimants sought by *mandamus* to obtain payment of these awards, but the Supreme Court of the United States denied the writ, holding that the government should not knowingly allow itself to be made the instrument of wrong in arbitration proceedings, and that as between it and its own citizens the honesty of the claims was always open to inquiry for the purpose of fair dealing with the other government. It appears that Mr. Evarts, Secretary of State, after full examination of Mexico's evidence, reported that grave doubt had been brought upon the substantial integrity of one of these claims (Benjamin Weil's), and the sincerity of the evidence as to the measure of damages in the other (La Abra Silver Mining Company's), and added that as regards the latter our national honor should require us to reconsider it only so far as the fraudulent exaggeration of the claim is concerned. But Congress was asked to provide for a more complete examination than the Secretary could give. Professor Moore has not looked with his usual care into the history of this La Abra claim, for he asserts (p. 1266), that Dr. Gardiner, a notorious rogue, who committed suicide in the Court of the District of Columbia when convicted of fraud practised upon a domestic tribunal in relation to a mine claimed by him in Mexico, "produced stronger evidence of title than that on which Sir Edward Thornton awarded larger sums on the Weil and La Abra claims." Gardiner's title was wholly forged. La Abra's was proved not only by documents, but by the examination of the vendor by Mexico herself, and besides, in the one case the proceeding was *ex parte* with no counsel to represent the government's interest, and in the other there was a real contest, each side having skilful agents, and the trial lasting five years. It is this La Abra case which is now pending before the courts of the United States. So clear was the evidence of title in the recent judicial proceedings that the government formally stipulated that it should be accepted as established.

Our government has ventured on several occasions to interfere with and even to set aside awards pronounced in favor of its citizens by arbitrators. When this has been done by means of a new treaty creating a new international tribunal for the rehearing of the same claims, as was the case in regard to the Venezuelan awards of 1866, there can be no doubt of the propriety of the course. But President Jackson in 1834 severely rebuked Congress for passing a bill affecting the payments of such awards to our citizens, reminding it that such indemnification was their exclusive property, with which neither the executive nor the legislature could properly interfere without their consent (Richardson's *Messages of the Presidents*, III. 98, 146). He added that all negotiation in reference to such matters was wholly within the competence of the executive, and that such authority could neither be constitutionally abridged nor increased by Congress.

Mr. Bayard, however, as Secretary of State did not hesitate to review and to reverse Justice Strong's award against Hayti in favor of Pelletier. He did this, too, not on account of any newly discovered evidence affecting any of the facts in the case, but because his view of the law was "in direct conflict with that reached by the learned arbitrator." Considering that the arbitrator who had been selected by Minister Preston and Secretary Frelinghuysen did not properly construe the protocol touching the subject, or understand the law relating to the jurisdiction of a country over offences committed by a merchant vessel in one of its ports, he refused to collect the award, and it was dropped. It is doubtful whether this can be considered either good law or sound policy. It is in direct conflict not only with Jackson's well-considered views, but with the opinion of Attorney-General Hoar in the Gibbes case (13 *Op.*, 19). If the same commission cannot reconsider a decision once formally delivered without a new agreement (Halleck's *International Law*, Ch. XII.), and if the executive cannot submit a claim to a new commission after it has been passed upon by the first, unless there is a treaty to that effect (*Frelinghuysen v. Key*, 110 U. S., 63, 73), it is preposterous to hold that the executive department itself may review the decision of an arbitrator.

E. I. RENICK.

*Recollections of the Civil War.* With the leaders at Washington and in the Field in the 'Sixties. By CHARLES A. DANA, Assistant Secretary of War from 1863 to 1865. (New York: D. Appleton and Co. 1898. Pp. xiii, 296.)

WHEN General Grant was under a cloud, after Shiloh, and his superiors were in a quandary whether to relieve him or not, Mr. Stanton, Secretary of War, sent Mr. Dana to his headquarters nominally to inspect the work of the paymasters but really to observe the situation in the army and report confidentially so that the Secretary might determine intelligently what to do. Mr. Dana's reports proved so reassuring, and so valuable in other ways besides, that he was kept on the field until Vicksburg fell. He was then appointed Assistant Secretary of War and sent to Chattanooga to confer with General Rosecrans upon any subject he might "desire to have brought to the notice of the department." Here he remained until after the victory of Missionary Ridge and the relief of General Burnside. Thereafter he was employed at his desk in Washington, on various short missions and especially with General Grant in Virginia. It is the story of his experiences while serving in these various capacities which he has written out and published.

"Recollections" though they are and composed for the most part at the very close of the veteran journalist's life, there was a broad foundation of recorded contemporary impressions upon which to build. There is little in the book for which the authority of dispatches from the field cannot be given. Most of Mr. Dana's reports have been printed in the *Rebellion Record*. Nearly everything of interest in them has been util-